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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,732	11/12/2003	Peter Bernard Ketley	4091-P0001A	7244
24126	7590	08/02/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			RAEVIS, ROBERT R	
986 BEDFORD STREET			ART UNIT	PAPER NUMBER
STAMFORD, CT 06905-5619			2856	

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/706,732

Applicant(s)

KETLEY, PETER BERNARD

Examiner

Robert R. Raevis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

Claims 6-8,18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 6, "said image capturing device" lacks antecedent basis.

As to claim 8, "said images" lack antecedent basis.

As to claim 18, this claim depends upon itself. Which claim should claim 18 depend upon?

As to claim 20, "system" is not consistent with claim 12's "apparatus". Should claim 20 depend upon on of claims 13-19?

Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As to claim 1, how is the recorded information compared ("comparing" on line 10 of claim 1)? Exactly what "recorded information" is compared? Isn't the only recorded information "identifying" information (photo of tags), and thus not of the nature that lends itself for comparison?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lord et al.

Lord et al teach (Figures 2,9) a system for identifying a vehicle emitting a high level of emissions, including: detector 18 at a first point, "trigger" (col. 11, line 63) means at a second point, "license plate reader" (col. 11, line 66) connected to the triggering means, and "operator PC" (col. 4, line 38) to store data from each vehicle.

Lord does not actuate the locate identification parameter "when" (line 2 from bottom of Applicant's claim 13) the detector detects a predetermined level.

Lord discusses (col. 3, lines 44-50) the desirability of determining the vehicles that fail the emissions testing.

As to claims 13,15, it would have been obvious to actuate the PC such that it located identification parameters "when" the vehicle of interest fails an emissions test as that data is all that is necessary to be saved for notification of the vehicle owner for purposes of correction/fine.

As to claims 14,16, Lord's detector should be positioned where the emissions of interest is located.

Claims 1-10,12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jack et al.

Jack et al teach (Figure 4) a method to identify a moving vehicle exceeding a predetermined level of emissions, including: detecting emissions at

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first and second stations (102-110); temporarily storing information relating to the concentrations and identification (via camera 42,44), at least until block 124; and recording the "first and second images" (col. 7, lines 50-51), data of which is provided to law-enforcement agency.

Jack does not expressly state that the "first and second images" are compared.

As to claims 1,2,9,4,6,8,10,12,19, it would have been obvious to compare the stored (i.e. recorded) "first and second images" of quadrants 131 and 132 to assure that the same vehicle is connected the readings of the two different test stations. Stored data is recorded for preservation of evidence.

As to claims 3,15, note the "trigger" (col. 7, line 7) signal that is generated by the beam sensor.

As to claims 5,14,16, the beam must pass through any available exhaust gas of interest.

As to claim 7, note reader 46, suggestive of OCR.

As to claims 13,17,18, Jack employs a processor connected to a particulate detection means 60 and imaging means (either 44 or 42/46), the processor used to store image data (Block 128) when predetermined emission values are exceeded.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Quinn teaches use of a plurality of emission testers 14 on a track to test a moving vehicle, the testers being responsive to sensor that both senses the

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vehicle and triggers the testers. However, Quinn does not suggest the "if" (claim 1, line 8; claim 12, line 16) or "identification" (claim 13, line 3 from last) and "when" (claim 13, line 2 from last) limitations.

Kleehammer tests exhaust gas of a truck with a tall exhaust.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 3:30pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RAEVIS